

ASSEMBLY BILL

No. 1112

Introduced by Assembly Member Blakeslee

February 27, 2009

An act to amend Section 25143 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1112, as introduced, Blakeslee. Hazardous waste: management.

Existing law authorizes the Department of Toxic Substances Control to grant a variance from the requirements regulating the management of hazardous waste, if the department makes specified findings.

This bill would make technical, nonsubstantive changes to that law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25143 of the Health and Safety Code is
2 amended to read:
3 25143. (a) The department may grant a variance from one or
4 more of the requirements of this chapter, or the regulations adopted
5 pursuant to this chapter, for the management of a hazardous waste
6 if all of the following conditions apply:
7 (1) One of the following conditions applies:
8 (A) The hazardous waste is solely a non-RCRA hazardous waste
9 or the hazardous waste or its management is exempt from, or is
10 not otherwise regulated pursuant to, the federal act.

1 (B) The requirement from which a variance is being granted is
2 not a requirement of the federal act, or the regulations adopted to
3 implement the federal act.

4 (C) The department has issued, or is simultaneously issuing, a
5 variance from the federal act for the hazardous waste management
6 pursuant to subdivision (c).

7 (2) The department makes one of the following findings:

8 (A) The hazardous waste, the amount of the hazardous waste,
9 or the hazardous waste management activity or management unit
10 is insignificant or unimportant as a potential hazard to human
11 health and safety or to the environment, when managed in
12 accordance with the conditions, limitations, and other requirements
13 specified in the variance.

14 (B) The requirements, from which a variance is being granted,
15 are insignificant or unimportant in preventing or minimizing a
16 potential hazard to human health and safety or the environment.

17 (C) The handling, processing, or disposal of the hazardous waste,
18 or the hazardous waste management activity, is regulated by
19 another governmental agency in a manner that ensures it will not
20 pose a substantial present or potential hazard to human health and
21 safety, and the environment.

22 (D) A requirement imposed by another public agency provides
23 protection of human health and safety or the environment
24 equivalent to the protection provided by the requirement from
25 which the variance is being granted.

26 (3) The variance is granted in accordance with this section.

27 (b) (1) The department may grant a variance upon receipt of a
28 variance application for a site or sites owned or operated by an
29 individual or business concern. The individual or business concern
30 submitting the application for a variance shall submit to the
31 department sufficient information to enable the department to
32 determine if all of the conditions required by subdivision (a) are
33 satisfied for all situations within the scope of the requested
34 variance.

35 (2) The department may also grant a variance, on its own
36 initiative, to one or more individuals or business concerns. If the
37 variance is granted to more than one individual or business concern,
38 the department, in granting the variance pursuant to this paragraph,
39 shall comply with all of the following requirements:

1 (A) The department shall make all of the following findings, in
2 addition to the findings required pursuant to paragraph (2) of
3 subdivision (a):

4 (i) That the variance is necessary to address a temporary
5 situation, or that the variance is needed to address an ongoing
6 situation pending the adoption of regulations by the department.

7 (ii) That the variance will not create a substantive competitive
8 disadvantage for a member or members of a specific class of
9 facilities. This finding shall be based upon information available
10 to the department at the time that the variance is granted.

11 (iii) That there are no reasonably foreseeable site-specific
12 physical or operating conditions that could potentially impact the
13 finding made by the department pursuant to paragraph (2) of
14 subdivision (a). This finding shall be supported by substantial
15 evidence in the record as a whole, and shall be based upon both
16 of the following:

17 (I) The types of hazardous waste streams, the estimated amounts
18 of hazardous waste, and the locations that are affected by the
19 variance. The estimate of the amounts of hazardous waste that are
20 affected by the variance shall be based upon information reasonably
21 available to the department.

22 (II) Due inquiry, with respect to the hazardous waste streams
23 and management activities affected by the variance, regarding the
24 potential for mismanagement, enforcement and site remediation
25 experience, and proximity to sensitive receptors.

26 (B) The variance shall not be granted for a period of more than
27 one year. A variance granted pursuant to this paragraph may be
28 renewed for one additional one-year period, if the department
29 makes a finding that the variance has not resulted in harm to human
30 health or safety or to the environment and that there has been
31 substantial compliance with the conditions contained in the
32 variance.

33 (C) The department shall issue a public notice at least 30 days
34 prior to granting the variance to allow an opportunity for public
35 comment. The public notice shall be issued in the California
36 Regulatory *Notice* Register, to the department's regulatory mailing
37 list, and to all potentially affected hazardous waste facilities and
38 generators known to the department. The department shall, upon
39 request, hold a public meeting prior to granting the variance. In
40 granting the variance and in making the findings required by

1 paragraph (2) of subdivision (a) and subparagraph (A), the
2 department shall consider all public comments received.

3 (D) The department shall not grant a variance pursuant to this
4 paragraph from the definition of, or classification as, a hazardous
5 waste, or from requirements pertaining to the investigation or
6 remediation of releases of hazardous waste or constituents.

7 (E) The authority of the department to grant or renew variances
8 pursuant to this paragraph shall remain in effect only until January
9 1, 2002, unless a later enacted statute, which is enacted before
10 January 1, 2002, deletes or extends that date. This subparagraph
11 shall not be construed to invalidate any variance granted pursuant
12 to this paragraph prior to the expiration of the department's
13 authority.

14 (c) (1) In addition to the variance authorized pursuant to
15 subdivisions (a) and (b), the department, after making one of the
16 findings specified in paragraph (2) of subdivision (a), may also
17 grant a variance from the requirements of the federal act in
18 accordance with ~~the provisions of~~ Sections 260.30, 260.31, 260.32,
19 and 260.33 of Title 40 of the Code of Federal Regulations, or ~~any~~
20 successor federal regulations, regarding the issuance of variances
21 from classification of a material as a solid waste or variances
22 classifying enclosed devices using controlled flame combustion
23 as boilers.

24 (2) This subdivision shall take effect on the date that the
25 department obtains authorization from the Environmental
26 Protection Agency to implement those provisions of the federal
27 act that are identified in paragraph (1).

28 (d) Each variance issued pursuant to this section shall be issued
29 on a form prescribed by the department and shall, as applicable,
30 include, but not be limited to, all of the following:

31 (1) Information identifying the individuals or business concerns
32 to which the variance applies. This identification shall be by name,
33 location of the site or sites, type of hazardous waste generated or
34 managed, or type of hazardous waste management activity, as
35 applicable.

36 (2) As applicable, a description of the physical characteristics
37 and chemical composition of the hazardous waste or the
38 specifications of the hazardous waste management activity or unit
39 to which the variance applies.

40 (3) The time period during which the variance is effective.

1 (4) A specification of the requirements of this chapter or the
2 regulations adopted pursuant to this chapter from which the
3 variance is granted.

4 (5) A specification of the conditions, limitations, or other
5 requirements to which the variance is subject.

6 (e) (1) Variances issued pursuant to this section are subject to
7 review at the discretion of the department and may be revoked or
8 modified at any time.

9 (2) The department shall revoke or modify a variance if the
10 department finds any of the following:

11 (A) The conditions required by this section are no longer
12 satisfied.

13 (B) The holder of the variance is in violation of one or more of
14 the conditions, limitations, or other requirements of the variance,
15 and, as a result of the violation, the conditions required by this
16 section are no longer satisfied.

17 (C) If the variance was granted because of the finding specified
18 in subparagraph (C) or (D) of paragraph (2) of subdivision (a), the
19 holder of the variance is in violation of one or more of the
20 regulatory requirements of another governmental agency to which
21 the holder is subject and the violation invalidates that finding.

22 (f) Within 30 days from the date of granting a variance, the
23 department shall issue a public notice on the California Regulatory
24 *Notice Register*.